IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2674 OF 1999
WITH
CRIMINAL APPLICATION NO. 2675 OF 1999

1. Manibhadra Marketing Pvt. Ltd.
through Dilip Ranawat having
its address at 12, D. Borjes
Building, Near Municipal
Garden, Vasco-de-Gama,
Goa 403 802.

2. Mr. Dilip Ranawant
having his office at the above
address .. Petitioners
(Org.Accd. Nos.1
and 2.)

Versus

1. Chandrakant Manilal Kothari
C/o M/s. Polyset Plastics
Limited, A/44-45, 29, MIDC
Andheri (East), Bombay 400 093

2. The State of Maharashtra .. Respondents

Mr.N.K. Thakore with Mr. Prakash Naik for petitioners.
Mr. Girish Kulkarni for respondent no.1.
Ms. R.M. Gadhvi, APP for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : January 18, 2007.

ORAL JUDGMENT:

1. Criminal Case Nos.239/S/95 and 240/S/95 were initiated against the petitioner-company and one of

its officers by the respondent no.1 alleging that six cheques issued in favour of the respondent no.1 were dishonoured and, therefore, the company and the officer were guilty of an offence punishable under Section 138 of the Negotiation Instruments Act, 1881 (for short "the Act"). The order of process was passed after verification and on receipt of the summons, the company appeared before the learned Metropolitan Magistrate, 10th Court, Bandra, Mumbai and filed an application for dismissal of the complaint separately in both the cases and the said applications came to be rejected by separate orders dated 1/4/1997. These orders were challenged in Criminal Revision Application Nos.220 and 221 of 1997 and by a common judgment and order dated 3/8/1999 the revisions came to be dismissed by the learned Additional Sessions Judge, Greater Mumbai. Hence, these applications filed invoking the inherent powers of this court under Section 482 of Cr.P.C. and the powers of superintendence under Article 227 of the Constitution.

2. In the complaint itself the complainant had

stated that when the respective cheques were presented with the State Bank of India, Andheri (East) Branch on the respective dates (24/4/1995, 2/5/1995 and 15/5/1995), they were dishonoured as per the intimation dated 29/5/1995 received from the bankers stating that the Citizen Co-operative has stopped the payment of the cheques for want of funds. By the complainant's letters dated 4/6/1995 sent by registered post, each of the accused was called upon to make the payment of the dishonoured cheques but these letters, so far as accused-company is concerned, were returned to the complainant with the endorsement that the office was closed, whereas the letters addressed to accused no.2 were returned with the endorsement "Addressee out of station". The complainant further states that thereafter all the cheques were sought to be redeposited, but the State Bank of India refused to accept them on the ground that the accused had stopped payment and this refusal in writing was dated 12/7/1995. The complainant then addressed letters dated 23/7/1995 by registered post calling upon the accused to make the payment of the amount covered by the said cheques. As per the

complainant these letters were received by the accused on 27/7/1995 and they were supposed to make the payment within 15 days of the receipt of the letters i.e. on or about 11/8/1995. The accused did not care to reply to the said letters. Thus, the complaints came to be filed on 11/9/1995.

3. On the backdrop of these events which were stated by the complainant himself, the accused filed an application before the trial court pointing out that the complaints were hit by the provisions of Sections 219 to 223 of the Criminal Procedure Code and in any case they were filed beyond limitation, with reference to the admitted fact that the cheques were originally dishonoured on 29/5/1995. The learned Metropolitan Magistrate did not agree with the submission on the grounds that the cheques were submitted twice and when they were submitted second time, a fresh cause of action arose for the complainant to issue a fresh notice and so long as the accused could not prove that they had given intimation to the complainant that they had advised the complainant not to present the cheques in the bank on

the ground that the payment was stopped. The learned Magistrate further noted that in the circumstances of this case, the point of dishonour of the cheques by stopping the payment would be considered after recording the evidence and not at an interlocutory stage. In his common judgment dated 3/8/1999 the learned Additional Sessions Judge did not find any reason to take a different view so as to allow the applications filed by the present petitioners. As per him the following two issues which arise in the cases will have to be decided on the basis of the evidence as they are the questions which are mixed questions of facts and law:-

> (a) Whether the demand notices after the initial dishonour were served or deemed to have been served on the applicants on a given date, thereby commencing the period of limitation from that day;
>
> (b) Whether the returning of the cheques in question by the respondent no.1's own Bankers under the circumstances that the respondent's Bankers were aware of the payment of the cheques having been stopped, amounts to return of a cheque unpaid for the purpose of provisions of section 138 of the Act cannot be decided without permitting the Respondent No.1 to lead evidence.

4. The learned counsel for the petitioners

referred to the judgment in the case of Sadanandan Bhadran vs. Madhavan Sunil Kumar **[AIR 1998 SC 3043]** in support of his contentions that the cause of action to move a complaint for an offence punishable under Section 138 of the Act would arise at the very first instance when the cheques were deposited and were returned uncashed and subsequently tendering all these cheques and getting them dishonoured would not give a fresh cause of action to move such a complaint. Per contra, the learned counsel for the complainant submitted that when the cheques were dishonoured, intimation dated 29/5/1995 was received and notices were issued on 4/6/1995 to the accused, as notices could not be served to them either on account of the change of address of the accused no.1 or the accused no.2 being out of station. Thus, none of the accused had any knowledge that the cheques drawn by them in favour of the complainant were not encashed/honoured. Under these circumstances, if the complainant deposited the cheques for the second time and on receiving the intimation from the bankers that the cheques were not encashed, notice would be sent calling upon the accused to make the payment and

provide them 15 days time for the same. If the amount was not remitted, fresh cause of action would arise to file a complaint under Section 138 of the Act and such complaint will have to be filed within a period of 30 days, after the 15 days period is over from the day the second notice was issued.

5. However, this proposition is not applicable to the facts of the instant case. On the admissions of the complainant himself, the bank i.e. State Bank of India, Andheri Branch did not accept the cheques submitted by the complainant on the second occasion and, therefore, there was no question of dishonour of the cheques for the second time. This would indicate that on the petitioners own contentions there was no cause of action when the cheques were dishonoured for the first time as the notices were not received by the accused and on the second time the cheques were not deposited and the drawer bank i.e. Citizen Co-operative Bank had no occasion to either honour or dishonour of these cheques. Cumulatively, there was no cause of action to file the complaint as all the requirements of Section 138 were not fulfilled.

6. It is apparent that both the courts below fell in gross error in addressing to and appreciating the peculiar facts of this case. The applications moved by the accused ought to have been granted as there was no cause of action to file the complaint under Section 138 of the Act. Alternatively, if it is accepted that there was a cause of action on the first dishonour, the complaints filed on 11/9/1995 were beyond limitations, which is not disputed. This view taken by me is no more res integra in view of the three judge bench decision in the case of Shri Ishar Alloy Steels Ltd. v. Jayaswals NECO Limited **[JT 2001 (3) SC 114]**.

7. In the premises, these criminal revision applications succeed and the same are hereby allowed. The impugned orders passed by the learned Metropolitan Magistrate, 10th Court, Bandra, Mumbai and the learned Additional Sessions Judge, Greater Mumbai are hereby quashed and set aside. The applications filed by the accused in both the criminal cases i.e. in C.C. No.239/S/95 and C.C. No.240/S/95 for dismissal of the

complaints are hereby allowed and the said complaints stand dismissed.

(B.H. Marlapalle,J.)